

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 115/Lab./AIL/J/2013, dated 12th August 2013)

NOTIFICATION

Whereas, an award in I.D. No. 20/2011, dated 24-4-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Management of M/s. Ajantha Cycle Parts Industry, Puducherry and Cycle Parts Jananayaga Thozhilalar Sangam, over non-employment of Thiruvalargal M. Janarthanan, G. Devaraj and K. Moorthy has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Wednesday, the 24th day of April 2013

I.D. No. 20/2011

The President,
Cycle Parts Jananayaga Thozhilalar
Sangam, (AICCTU), Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Ajantha Cycle Parts Industry,
Thattanchavady, Puducherry. . . Respondent

This industrial dispute coming on 19-4-2013 for final hearing before me in the presence of Thiru M. Ganapathy, Advocate for the petitioner, Thiru C. Jagadeesan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.127/AIL/Lab./J/2011, dated 27-6-2011

of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Cycle Parts Jananayaga Thozhilalar Sangam affiliated with AICCTU against the management of M/s. Ajantha Cycle Parts Industry, Puducherry, over their non-employment of Thiruvalargal M. Janarthanan, G. Devaraj and K. Moorthy is justified?

(2) If justified, to what relief they are entitled to?

(3) To compute the relief in terms of money, if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

One Devaraj, Janarthanan and Murthy are the employees of the respondent for more than 30 years. Devaraj and Janarthanan were working as Pressman and Murthy was working as Spot Welding and Finishing Man. Except the management staff, the workers are paid production linked piece-rate. Initially, the respondent had supplied adequate raw materials to the employees for their eight hours work and the normal production was carried out. Subsequently the respondent has not provided adequate raw materials for the eight hours work on piece-rate. Therefore, the employees of the respondent demanded monthly wages without basing on piece-rate. This demand created an aversion in the mind of the respondent against the employees.

In order to have fair and better negotiation with the management, the employees of the management started a trade union under the name and style of Cycle Parts Jananayaga Thozhilalar Sangam in the year 2005 and registered with the Registrar of Trade Unions, Puducherry and the said Janarthanan was Secretary, Devaraj was Vice-President and Murthy was Treasurer of the said union. This genuine trade union activities infuriated the respondent and the respondent has decided to take a revenge against them under guise of some misconduct. The respondent on this backdrop started to issue a show cause notice on 16-4-2008 to all the three employees on some alleged misconduct. Subsequently, without following any rule of law and natural justice, the respondent had removed the said three employees from the service without any justification or reason. Now, the petitioner has come to know that the Enquiry Officer has produced a report to the management arbitrarily without any evidence or basis and according to whims and fancies of the management. Without responding to their request, a domestic enquiry was ordered and on the basis of the alleged domestic enquiry report, the petitioners

were dismissed from service from 15-4-2009. In reality, no enquiry was conducted on the alleged dates as informed by the Enquiry Officer. Hence, the petitioners were dismissed from service according to the whims and fancies of the respondent without following any rule of law or procedure. Hence, this industrial dispute is filed to reinstate the said employees with other benefits.

3. The respondent in their counter has stated as follows:-

Cycle Parts Jananayaga Thozhilalar Sangam (AICCTU) is not a registered trade union under Trade Union Act, 1926. The petitioner trade union has not authorised to file the above petition by virtue of a resolution adopted by a majority of the members at a meeting. The so-called President of AICCTU is not an employee or employer in any industry or trade.

The respondent has every right to adopt the system of payment of wages in his industrial unit and pay the same out of any one method of payment of wages as prescribed by the Payment of Wages Act *i.e.* (1) Wages for time work or (2) Wages for piece work. The respondent adopts the payment of wages for piece work ever since they started industrial unit depends upon the nature of work and to maintain production. The payment of wages for piece work has been fixed from time to time as mutually agreed upon by the employees and the employer. Similar practice is adopted by all other cycle parts manufacturers across the country. No trade union or any employee has right to compel the management of any industrial unit to convert the system of payment of wages from one system to another, when the management is permitted to fix the wages as per law. If an employee feels that the piece-rate is not sufficient, he may request the management to revise the rate as mutually agreed upon but no otherwise by claiming to convert the system of payment from one to another.

The President of so-called Cycle Parts Jananayaga Thozhilalar Sangam (AICCTU) is advised the employees to resort in unlawful activities by refusing to receive their salary and bonus whenever it becomes due and stop work or slow down the work inside the industrial unit to go for unlawful strike to restrain the other employees, staff and management to enter into the industrial units unlawfully with a view to harass the management to meet the demands for the employees and its so-called President for his own benefit.

When some of the employees refused to receive the salary due to them, they were advised to receive the salary, bonus and other emoluments and the

respondent sent letters to their respective address to advise them to receive the salary by registered post. The registered post sent to them, were returned to the respondent with the endorsement "refused. returned to the sender". Then the respondent filed a petition to deposit the salary and other dues to the workers, who refused to receive before the authority under the Payment of Wages Act, but the said authority returned the petitions pointing out that there is no provision in the Payment of Wages Act. Then the respondent filed a case before the Pondicherry State Legal Authority against the employees, who refused to receive their dues. But the said employees evaded to receive the salary. The respondent is paying the wages as fixed by the Minimum Wages Act and the cost of living index as per the order of Government of Puducherry.

The said three employees were terminated from service after issue of show cause notice and conducting domestic enquiry only. They were not dismissed from service all of a sudden. Hence, they pray for dismissal of the petition.

4. In order to prove the case, PW.1 was examined on the side of the petitioner and Ex.P1 to Ex.P45 were marked through him. On the side of the respondent, neither oral nor documentary evidence was adduced.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point:*

The contention of the petitioner is that one Devaraj, Janarthanan and Murthy are the employees of the respondent for more than 30 years and they were paid the wages on piece-rate and therefore, the employees of the respondent demanded monthly wages without basing on piece-rate and this demand created an aversion in the mind of the respondent against the employees and in order to have fair and better negotiation with the management, the employees of the management started a trade union under the name and style of Cycle Parts Jananayaga Thozhilalar Sangam in the year 2005 and registered with the Registrar of Trade Unions, Puducherry and the said Janarthanan was Secretary, Devaraj was Vice-President and Murthy was Treasurer of the said union and this genuine trade union activities infuriated the respondent and the respondent has decided to take a revenge against them under guise of some misconduct and the respondent on this backdrop started to issue a show cause notice on 16-4-2008 to all the three employees on some alleged misconduct and subsequently without following any rule of law and natural justice, the respondent had

removed the said three employees from the service without any justification or reason. The petitioner further contended that no enquiry was conducted on the alleged dates as informed by the Enquiry Officer.

7. In order to prove the case of the petitioner, the President of the petitioner trade union was examined as PW.1. PW.1 in his evidence has deposed as stated in the claim statement.

8. *Per contra*, the contention of the respondent is that the said three employees were terminated from service after issue of show cause notice and conducting domestic enquiry only and they were not dismissed from service all of a sudden.

9. When the petitioner has stated that there is no enquiry conducted in this case, the burden is cast upon the respondent to prove that the enquiry was conducted in a fair and proper manner after giving sufficient opportunity to the said workmen. As there is no oral or documentary evidence was produced on the side of the respondent, this court has to decide the said issue based upon the oral and documentary evidence adduced on the side of the petitioner.

10. PW.1 has marked the copy sent by the respondent to the said Janarthanan as Ex.P1. In Ex.P1 it has been stated that the said Janarthanan, Devaraj and Murthy have involved in an illegal strike and also insisted and threatened the other employees to participate in the said strike and called for an explanation for the said act. Ex.P3 is the copy of the letter sent by the respondent management to the said Janarthanan informing that one Ilango is the Enquiry Officer, who will conduct the enquiry on 19-11-2008 at 3.30 p.m. at Chinna Subrayapillai Street. Ex.P4 is the copy of the letter sent by the said Janarthanan to the respondent, wherein, it has been stated that the place, time and date of enquiry will be intimated only by the Enquiry Officer and not by the respondent as stated in Ex.P3 and in the above circumstances, the said Enquiry Officer cannot act independently and hence he requested the respondent management to change the Enquiry Officer.

11. It is settled law that normally the Enquiry Officer only fix the time, date and place of enquiry and intimate the same to the charged employee. But in this case, it is surprisingly to note that the respondent management themselves sent a letter under Ex.P3 informing the said Janarthanan about the enquiry, which is against labour law. Further on the side of the respondent, no enquiry proceedings or enquiry report was filed to prove that they have conducted the enquiry in a proper manner. In fact the respondent themselves have admitted that since the petition mentioned workmen did not participate in the enquiry proceedings, they conducted the *ex parte* enquiry proceedings. Generally sufficient

opportunity has to be given to the workmen in the enquiry proceedings to defend their case and then only, the management has to conduct the enquiry in *ex parte* manner. In this case, the respondent has fixed the enquiry on 19-11-2008, which was objected by the petition mentioned workmen under Ex.P4 by stating that the Enquiry Officer only fix the date, time and place of enquiry and then the Enquiry Officer sent a letter, dated 16-12-2008 under Ex.10 giving another opportunity to them on 22-12-2008 to participate in the enquiry and since they have not participated in the enquiry, the respondent sent dismissal order to the petition mentioned workmen under Ex.P13. From the above, it can be seen that the respondent has not given sufficient opportunities to the petition mentioned workmen to defend their case in the enquiry proceedings in a hurried manner and hence the dismissal orders under Ex.P15, Ex.P30 and Ex.P45, passed by the respondent based on the *ex parte* enquiry proceedings is liable to be set aside.

12. The contention of the respondent is that Cycle Parts Jananayaga Thozhilalar Sangam (AICCTU) is not a registered trade union under Trade Union Act, 1926 and the petitioner trade union has not authorised to file the above petition by virtue of a resolution adopted by a majority of the members at a meeting and the so-called President of AICCTU is not an employee or employer in any industry or trade. The respondent further contended that the petitioner has not furnished the detail of which the trade union is affiliated with which trade union and the authority for so doing and therefore, the claim of the affiliation is not under any law.

13. On perusal of records, it is seen that a letter, dated 15-5-2008 addressed to All General Secretaries of Central Trade Union Organisations and Central Employers Organisation, in which the particulars of membership of trade unions affiliated to Central Trade Union Organisations is mentioned, as per which the All India Central Council of Trade Unions (AICCTU) is affiliated with the Central Trade Union Organisations. A perusal of records would further reveal that Cycle Parts Jananayaga Thozhilalar Sangam has been registered with Registrar of Trade Union, Puducherry as per letter, dated 9-4-2009 sent by the Registrar of Trade Union to the President/Secretary, Cycle Parts Jananayaga Thozhilalar Sangam. But the said documents have not been marked as exhibits on the side of the petitioner. However, PW.1 in his cross-examination has stated that Cycle Parts Jananayaga Thozhilalar Sangam (AICCTU) has been registered with the Registrar of Labour Department and though the registration certificate has not been marked, he is ready to produce the same as required. The learned counsel for the respondent has not filed any petition to direct the petitioner to produce the said registration certificate. The burden is cast upon

the respondent to disprove the contention of the petitioner through oral and documentary evidence. But as already stated, the respondent has not examined any witness or filed any document to prove their case. In the absence of sufficient evidence, the said contention of the learned counsel for the respondent cannot be accepted.

14. PW.1 in his evidence has deposed that the employees of the respondent management had been engaged in piece-rate without implementing the minimum wages and hence they demanded the monthly wages without basing on piece-rate and in order to have fair and better negotiation with the management, the employees of the management started a trade union under the name and style of Cycle Parts Jananayaga Thozhilalar Sangam in the year 2007 and the petition mentioned workmen namely, Janarthanan, G. Devaraj and K. Murthy are the Secretary, Vice-President and Treasurer respectively and in order to take vengeance against them, they have been removed from service without following any rule of law and natural justice. The respondent has also admitted about the dispute between them and the petitioners with regard to implementation of minimum wages, but denied that in order to take vengeance against them, they have been removed from service.

15. It is to be pointed out that the Government has referred this case only to decide whether the non-employment of the petitioners is justified or not. Hence, this court has to answer only for the said question and there is no need to decide other aspect *i.e.* whether the petitioners are entitled for the salary under Minimum Wages Act or not. As stated earlier, the respondent has failed to prove that the domestic enquiry was conducted in a fair and proper manner by giving sufficient opportunity to them. In fact the respondent in his counter has stated that non-participation and non-co-operation in the enquiry, the Inquiry Officer has decided the dispute on merit based on the available materials and the documents and imposed the punishment of dismissal of service on them. No documents placed before this court that the witnesses were examined in the domestic enquiry to prove the charges. No documents filed before this court to show that before passing final orders, the second show cause notice was issued to the workmen. Hence, this court has come to the conclusion that the respondent has not conducted the domestic enquiry in a fair and proper manner and hence the dismissal order of the petitioners based on the said enquiry is liable to be set aside and they are entitled for reinstatement and with other benefits. But considering the facts and circumstances of the case, the petitioners are entitled to 50% of back wages only. Accordingly, this point is answered.

16. In the result, the industrial dispute is partly allowed and the respondent is directed to reinstate the petition mentioned workmen namely, M. Janarthanan, G. Devaraj and K. Murthy into service with 50% of back wages, continuity of service and other benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this 24th day of April 2013.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 25-10-2012 - Balasubramanian

List of petitioner's exhibits:

- Ex.P1 — Copy of the letter, dated 16-4-2008 sent by the respondent to Janarthanan.
- Ex.P2 — Copy of the reply sent by Janarthanan to the respondent, dated 5-5-2008.
- Ex.P3 — Copy of the letter sent by respondent to Janarthanan, dated 8-11-2008.
- Ex.P4 — Copy of the reply sent by Janarthanan to respondent, dated 14-11-2008.
- Ex.P5 — Copy of the letter from petitioner to respondent, dated 8-12-2008.
- Ex.P6 — Copy of the letter from Janarthanan to the respondent, dated 8-12-2008.
- Ex.P7 — Copy of the letter sent by Janarthanan to respondent, dated 11-12-2008.
- Ex.P8 — Copy of the unsigned letter of respondent to Janarthanan, dated 15-12-2008.
- Ex.P9 — Copy of the letter from Janarthanan to respondent, dated 15-12-2008.
- Ex.P10 — Copy of the letter from Enquiry Officer to respondent, dated 16-12-2008.
- Ex.P11 — Copy of the letter from Janarthanan to respondent, dated 19-12-2008.
- Ex.P12 — Copy of the letter from Janarthanan to respondent, dated 19-12-2008.
- Ex.P13 — Copy of the letter from Janarthanan to Enquiry Officer, dated 19-12-2008.
- Ex.P14 — Copy of the letter from Janarthanan to respondent, dated 19-3-2009.

Ex.P15 — Copy of the dismissal order of Janarthanan, dated 15-4-2009 sent by respondent.

Ex.P16 — Copy of the letter received from respondent to Murthy, dated 16-4-2008.

Ex.P17 — Copy of the reply from Murthy to the respondent, dated 5-5-2008.

Ex.P18 — Copy of the letter from the respondent to Murthy, dated 8-11-2008.

Ex.P19 — Copy of the reply from Murthy to respondent, dated 14-11-2008.

Ex.P20 — Copy of the letter from the petitioner to the respondent, dated 8-12-2008.

Ex.P21 — Copy of the letter from Murthy to respondent, dated 8-12-2008.

Ex.P22 — Copy of the letter from Murthy to the respondent, dated 11-12-2008.

Ex.P23 — Copy of the unsigned letter from respondent to Murthy, dated 15-12-2008

Ex.P24 — Copy of the letter from Murthy to respondent, dated 15-12-2008.

Ex.P25 — Copy of the letter from Enquiry Officer to the respondent, dated 16-12-2008.

Ex.P26 — Copy of the letter from Murthy to respondent, dated 19-12-2008.

Ex.P27 — Copy of the letter from Murthy to Enquiry Officer, dated 19-12-2008.

Ex.P28 — Copy of the letter from the respondent to Murthy, dated 17-2-2009.

Ex.P29 — Copy of the letter from Murthy to the respondent, dated 19-3-2009.

Ex.P30 — Copy of the dismissal order of Murthy, dated 15-4-2009.

Ex.P31 — Copy of the letter from the respondent to Devaraj, dated 16-4-2008.

Ex.P32 — Copy of the reply from Devaraj to respondent, dated 5-5-2008.

Ex.P33 — Copy of the letter from the respondent to Devaraj, dated 8-11-2008.

Ex.P34 — Copy of the reply from Devaraj to respondent, dated 14-11-2008.

Ex.P35 — Copy of the letter from the petitioner to the respondent, dated 8-12-2008.

Ex.P36 — Copy of the letter from Devaraj to respondent, dated 8-12-2008.

Ex.P37 — Copy of the letter from Devaraj to the respondent, dated 11-12-2008.

Ex.P38 — Copy of the unsigned letter from respondent to Devaraj, dated 15-12-2008.

Ex.P39 — Copy of the letter from Devaraj to respondent, dated 15-12-2008.

Ex.P40 — Copy of the letter from Enquiry Officer to the respondent, dated 16-12-2008

Ex.P41 — Copy of the letter from Devaraj to respondent, dated 19-12-2008.

Ex.P42 — Copy of the letter from Devaraj to Enquiry Officer, dated 19-12-2008.

Ex.P43 — Copy of the letter from the respondent to Devaraj, dated 17-2-2009.

Ex.P44 — Copy of the letter from Devaraj to the respondent, dated 19-3-2009.

Ex.P45 — Copy of the dismissal order of Devaraj, dated 15-4-2009.

List of respondent's witnesses: Nil.

List of respondent's exhibits: Nil.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 116/Lab./AIL/J/2013, dated 12th August 2013)

NOTIFICATION

Whereas, an award in I. D. No. 19/2011, dated 24-4-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Ajantha Cycle Parts Industry, Puducherry and Thiruvallargal K. Sekar and R. Janagaraj, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Wednesday, the 24th day of April 2013

I.D. No. 19/2011

(1) K. Sekar
(2) R. Janagaraj . . . Petitioners

Versus

The Managing Director,
Ajantha Cycle Parts Industry,
Thattanchavady, Puducherry . . . Respondent

This industrial dispute coming on 19-4-2013 for final hearing before me in the presence of Thiru M. Ganapathy, Advocate for the petitioner, Thiru C. Jagadeesan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.126/AIL/Lab./J/2011, dated 27-6-2011 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by the petitioners *viz.*, Thiruvalargal R. Janagaraj and K. Sekar, against the management of M/s. Ajantha Cycle Parts Industry, Puducherry, over their non-employment is justified ?

(2) If justified, to what relief, the petitioners are entitled to?

(3) To compute the relief in terms of money, if it can be so computed.

2. The petitioners, in their claim statement, have averred as follows:

The first petitioner was joined as Typist on 18-5-1983 and the second petitioner was joined as Clerk on 1-4-1988 in the respondent's company. Both the petitioners have worked to the satisfaction of the management for the past 30 years without any blemish or remarks. Without justification, the management suspended both the petitioners from discharging their duties from 27-12-2007. Subsequently after a lapse of 16 months, the charge sheets have been served on the petitioners for an alleged misconduct in a very vague manner. Immediately the petitioners have requested the management to furnish photocopy of the records referred in the charge

sheets for submitting a due and proper explanation. Without responding to their request, a domestic enquiry was ordered and on the basis of the alleged domestic enquiry report, the petitioners were dismissed from service from 11-12-2009. The enquiry was not conducted in a fair and proper manner. Hence, this industrial dispute is filed to reinstate them into service with back wages and other benefits.

3. The contention of the respondent is that the petitioners were dismissed from service after the domestic enquiry was conducted. In the domestic enquiry, none of the petitioners participated and cooperated to conduct the enquiry by the Enquiry Officer. Because non-participation and non-cooperation in the enquiry, the Inquiry Officer decided the dispute on merit based on the available materials and documents and imposed the punishment of dismissal of service on them.

During the proceedings pending before the authorised officer under the payment of wages, the arrears of wages, suspension allowance, etc. were fully paid and nothing is due. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioners, PW.1 was examined and Ex.P1 to Ex.P8 were marked. On the side of the respondent, though the proof affidavit was filed by RW.1, subsequently it was not pressed by the learned counsel for the respondent. Joint memo. was filed to record that Ex.P1 to Ex.P45 were marked in I.D. No. 20/2011 may be treated as documents filed and marked as respondent's side documents. The memo. is recorded.

5. The point for consideration is:

Whether the industrial dispute can be allowed?

6. On this point :

The contention of the petitioners is that the first petitioner was joined as Typist on 18-5-1983 and the second petitioner was joined as Clerk on 1-4-1988 in the respondent's company and they have worked to the satisfaction of the management for the past 30 years without any blemish or remarks and without justification, the management suspended both them from discharging their duties from 27-12-2007 and subsequently after a lapse of 16 months, the charge sheets have been served on them for an alleged misconduct in a very vague manner and immediately they have requested the management to furnish photocopy of the records referred in the charge sheets for submitting a due and proper explanation and without responding to their request, a domestic enquiry was ordered and on the basis of the alleged domestic enquiry report, they were dismissed from service from 11-12-2009.

7. In order to prove his case, the first petitioner was examined as PW.1. PW.1 in his evidence has deposed as stated in the petition. During the cross-examination, PW.1 has stated that without conducting the domestic enquiry, he was dismissed from service. PW.1 has marked the letter received from the Inquiry Officer as Ex.P1, copy of the letter received from the first petitioner to Inquiry Officer, dated 25-11-2009 as Ex.P2, letter of dismissal of the first petitioner as Ex.P3, reply letter to the management by the first petitioner for the dismissal as Ex.P4, letter received from the Enquiry Officer, dated 16-11-2009 as Ex.P5, Copy of the letter from the second petitioner to the Enquiry Officer as Ex.P6, letter of dismissal of the second petitioner as Ex.P7 and the reply sent by the second petitioner as Ex.P8.

8. *Per contra*, the contention of the respondent is that the petitioners were dismissed from service for their misconduct committed by them which was proved through the domestic enquiry. In order to prove his claim, the managing partner of the respondent's firm was examined as RW.1. RW.1 in his evidence has deposed that the petitioners have involved in dharnas and pasted wall posters showing their protests and participated in bandh and hence the payment of subsistence allowance was stopped from the month of May 2008 and they stated that they did not prefer to participate in the domestic enquiry.

9. According to the respondent, the petitioners were dismissed from service for their misconduct committed by them, which was proved through the domestic enquiry. But the petitioners have stated that the enquiry was not conducted in a fair and proper manner. Hence, the duty is cast upon the respondent to prove their contention through oral and documentary evidence. In this case, the enquiry proceedings is a vital document to decide whether the enquiry was conducted in a fair and proper manner by the respondent management. But on the side of the respondent, no oral or documentary evidence was adduced.

10. As per the evidence of PW.1, after a lapse of 16 months, the charge sheets have been served on the petitioners for an alleged misconduct in a very vague manner and immediately he requested the management to furnish photocopy of the records referred in the charge sheets for submitting a due and proper explanation and without responding to his request, a domestic enquiry was ordered and on the basis of the alleged domestic enquiry report, he and the second petitioner were dismissed from service on 11-12-2009. PW.1 further stated that in reality, no enquiry was

conducted on the alleged dates as informed by the Enquiry Officer and they have received a notice from the Enquiry Officer informing that they should appear before him on 25-11-2009 at about 3.30 p.m. by mentioning the venue also and accordingly, they went to the enquiry place, but neither the Enquiry Officer nor the management appeared there up to 5.30 p.m. on that day.

11. In order to prove his contention, PW.1 has marked the copy of the letters sent by the Enquiry Officer to the petitioners as Ex.P1 and Ex.P5, as per which, the Enquiry Officer has informed the petitioners that the enquiry will be conducted on 25-11-2009 at 3.30 p.m. PW.1 has also marked the letters, dated 25-11-2009 and 16-11-2009 as Ex.P2 and Ex.P6 respectively. In Ex.P2 and Ex.P6, both petitioners have stated that they went to the place, where the enquiry was scheduled to be conducted, but the Enquiry Officer or the representative from the respondent management have not appeared till 5.30 p.m. and they have returned home with disappointment. Ex.P6 was sent by the second petitioner under certificate of posting to prove that it was sent to the respondent. On the side of the respondent, no reply was sent to the petitioners for Ex.P2 and Ex.P6. If really, the respondent has conducted the enquiry on the scheduled date as mentioned in Ex.P1 and Ex.P5, they would have sent reply to the petitioners, denying the facts mentioned in Ex.P2 and Ex.P6. Hence, the contention of the respondent that the petitioners did not participate in the domestic enquiry and they have not cooperated with the enquiry proceedings are all false and cannot be accepted. Further in the dismissal order of the first and second petitioners under Ex.P3 and Ex.P7 respectively, the respondent has stated that in the suspension period, both the petitioners have continued to make dharnas and street shows as against the company and paste wall posters showing their protest and hence there is no need to conduct any further enquiry as their act elucidates that they are guilty of the charges made in the show cause notice, dated 15-4-2009. The said version of the respondent itself would clearly prove that the enquiry was not conducted in a proper manner by giving sufficient opportunity to the petitioners.

12. In the dismissal orders under Ex.P3 and Ex.P7, the respondent has stated that they have received a complaint from one Senthil Kumaran, S. Kaalimuthu @ Chandru and Durairaj stating that the petitioners are disturbing the workers towards entering into the premises of management and threatening them by uttering filthy language and they blocked them in front of the gate and the said Senthil Kumaran came out, the first petitioner had slapped him and both of them tried

to provoke violence uttering with filthy languages not to go for work in the company. But the said persons have not been examined as witnesses in the domestic enquiry or before this court to prove the said aspect. Further no police complaint has been filed before this court to prove the threat made by the petitioners on the said persons and for slapping on the said Senthil Kumaran. Mere contention will not in any way helpful to the case of the respondent.

13. The petitioners in their claim statement have stated that the employees of the respondent management had been engaged in piece-rate without implementing the minimum wages and hence they demanded the monthly wages without basing on piece-rate and in order to have fair and better negotiation with the management, the employees of the management started a trade union under the name and style of Cycle Parts Jananayaga Thozhilalar Sangam in the year 2007 and one Janarthanan, G. Devaraj and K. Murthy, who are the petition mentioned workmen in the connected I.A. No. 20/2011, as Secretary, Vice-President and Treasurer respectively and they are the members in the said association and in order to take vengeance against them, they have been removed from service without following any rule of law and natural justice. The respondent has also admitted about the dispute between them and the petitioners with regard to implementation of minimum wages, but denied that in order to take vengeance against them, they have been removed from service.

14. It is to be pointed out that the Government has referred this case only to decide whether the non-employment of the petitioners is justified or not. Hence, this court has to answer only for the said question and there is no need to decide other aspect *i.e.*, whether the petitioners are entitled for the salary under Minimum Wages Act or not, As stated earlier, the respondent has failed to prove that the domestic enquiry was conducted in a fair and proper manner by giving sufficient opportunity to them. In fact the respondent in his counter has stated that non-participation and non-cooperation in the enquiry, the Inquiry Officer has decided the dispute on merit based on the available materials and the documents and imposed the punishment of dismissal of service on them. But the petitioners in their letters have clearly stated that they went to the place, where the enquiry was scheduled to be conducted and waited up to 5.30 p.m. on that day and as the Enquiry Officer and any representative from the respondent management did not come, they returned home with disappointment, for which no reply was sent by the respondent management. Hence, this

court has come to the conclusion that the respondent has not conducted the domestic enquiry in a fair and proper manner and hence the dismissal order of the petitioners based on the said enquiry, is liable to be set aside and they are entitled for reinstatement and with other benefits. But considering the facts and circumstances of the case, the petitioners are entitled to 50% of back wages only. Accordingly, this point is answered.

15. In the result, the industrial dispute is partly allowed and the respondent is directed to reinstate the petitioners into service with 50% of back wages, continuity of service and other benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this 24th day of April 2013.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 10-10-2012 - Sekar

List of petitioner's exhibits:

Ex.P1 — Letter received from the Inquiry Officer, dated 16-11-2009.

Ex.P2 — Copy of the letter from the first petitioner to Inquiry Officer, dated 25-11-2009.

Ex.P3 — Letter of dismissal of the first petitioner, dated 11-12-2009.

Ex.P4 — Reply letter to the management by the first petitioner, dated 15-2-2010.

Ex.P5 — Letter received from the Inquiry Officer, dated 16-11-2009.

Ex.P6 — Copy of the letter from the second petitioner to Inquiry Officer, dated 25-11-2009.

Ex.P7 — Letter of dismissal of the second petitioner, dated 11-12-2009.

Ex.P8 — Reply letter to the management by the second petitioner.

List of respondent's witnesses : Nil

List of respondent's exhibits : Nil.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.